

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2017

CORAM :

THE HONOURABLE MR. JUSTICE C.T.SELVAM

CRL.R.C.No.1164 of 2009

and

Crl.O.P.No.27092 of 2009

Crl.R.C.No.1164 of 2009

Augustin

S/o.Madhalaimuthu

... Petitioner

Vs.

1.State represented by
The Inspector of Police,
District Crime Branch,
Dharmapuri.
Crime No.20 of 2007

2.E.V.Rajasekar
S/o.Venkan

3.Sanathi
W/o.E.V.Rajasekar

... Respondents

(respondents 2 and 3 are impleaded as
per order of this Court dated 01.03.2017
passed in Crl.M.P.No.3262 of 2017)

Criminal Revision Case filed under Section 397 r/w 401 of
the Code of Criminal Procedure against the order of learned
Judicial Magistrate I, Dharmapuri, passed in Crl.M.P.No.5599 of
2008 in C.C.No.122 of 2008 on 30.10.2009.

Crl.O.P.No.27092 of 2009

Augustin

S/o.Madhalaimuthu

... Petitioner

Vs.

1.State represented by
The Inspector of Police,
District Crime Branch,
Dharmapuri.

2.The Deputy Superintendent of Police,
Dharmapuri Town,
Dharmapuri District.

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3.E.V.Rajasekar
S/o.Venkan

4.Santhi

W/o.E.V.Rajasekar
(respondents 3 and 4 are impleaded as
per order of this Court dated 01.03.2017
passed in Crl.M.P.No.3263 of 2017)

... Respondents

Criminal Original Petition filed u/s.482 of the Code of Criminal Procedure seeking a direction for further investigation in the case pending in Crime No.20 of 2007 on the file of first respondent to second respondent.

Appearance:

For Petitioner : Mr.S.Jayakumar [in both revision and original petition]

For Respondents: Mr.V.Arul, Government Advocate(Crl.side)
[R1 in both revision and original petition
R2 in the original petition]
Mr.A.Sirajudeen, senior counsel for
Mr.Hasan Mohammed Jinnah [R2 & R3 in revision and
R3 & R4 in original petition]

C O M M O N O R D E R

Crl.R.C.No.1164 of 2009 challenges the order of learned Judicial Magistrate I, Dharmapuri, passed in Crl.M.P.No.5599 of 2008 in C.C.No.122 of 2008 on 30.10.2009.

2. Petitioner/de facto complainant preferred a complaint informing that his mother M.Nagayam, was allotted an Indane Gas Agency on compassionate ground since another son of hers had sacrificed his life while serving the Indian Army. Petitioner's mother has nominated the petitioner as her agent and one E.V.Rajasekar, second respondent in revision and third respondent in original petition, as Manager, he being a family friend. A joint account was opened in the name of petitioner and E.V.Rajasekar. The accusation is that the E.V.Rajasekar has misused the cheques signed by petitioner and misappropriated a sum of Rs.5,85,000/-. Further, E.V.Rajasekar has obtained a cheque book for petitioner's personal account by forging his signature and issued cheques to accused 3 to 5 in the complaint to the tune of Rs.31,00,000/- which on presentation were returned unpaid and hence, a case alleging offence u/s.138 of the Negotiable Instruments is pending against petitioner and his mother. E.V.Rajasekar and his wife Shanthi have fabricated the Partnership Deed of the Gas Agency and are claiming right over the distributorship of the Gas Agency. When the same was

questioned, they threatened petitioner and his staff as also took away vital documents of the Gas Agency. That apart, E.V.Rajasekar had purchased a lorry in the name of his wife and EMIs are being paid out of the profit of the Gas Agency. Petitioner preferred a complaint u/s.200 Cr.P.C. before learned Judicial Magistrate I, Dharmapuri and the same was taken on file in Crime No.20 of 2007 on the file of first respondent for offences u/s.419, 465, 379 and 420 IPC. Upon completion of investigation, a charge sheet was filed informing commission of offences u/s.465, 468, 406, 403 and 420 IPC. Not satisfied with the conduct of investigation, petitioner preferred CrI.M.P.No.5599 of 2008 in C.C.No.122 of 2008 on the file of Judicial Magistrate I, Dharmapuri, seeking further investigation or re-investigation by second respondent viz., Deputy Superintendent of Police, Dharmapuri or any other competent officer. On dismissal of such petition under orders dated 30.10.2009, petitioner has preferred the present revision.

3. CrI.O.P.No.27092 of 2009 has been filed seeking a direction towards further investigation in Crime No.20 of 2007 on the file of first respondent by second respondent.

4. Heard learned counsel for petitioner, learned Additional Public Prosecutor for State and learned senior counsel for other respondents.

5. Taking this Court through the order of Court below, learned counsel for petitioner submitted that Court below has dismissed CrI.M.P.No.5599 of 2008 in C.C.No.122 of 2008 on the following reasoning:

1. That the petition moved by petitioner/de facto complainant was not maintainable.
2. That the remedy of petitioner lies under Section 482 Cr.P.C./Article 226 of the Constitution of India.
3. That the petition had been moved belatedly.

Learned counsel submitted that upon completion of investigation and filing of final report, no notice has been caused to petitioner in keeping with Section 173(2) Cr.P.C. Such act runs contra to the decision of the Supreme Court in Bhagwant Singh v. Commissioner of Police and another [1985 (2) SCC 537]. Informing that he was aware of the judgment of the Full Bench of this Court in Chinnathambi @ Subramani v. State [2017-1-L.W. (CrI.) 485] which inter alia held that after taking of cognizance further investigation could be sought only by the investigation agency, learned counsel submitted that such observation of the Full Bench came about pursuant to judgment of Supreme Court. Learned counsel submitted that the bar informed in the judgment of the Full Bench would not apply in the instant case inasmuch as no notice of the final report had been caused to de facto

complainant and hence, his opportunity to file a protest petition before taking of cognizance by Court below was lost. Learned counsel submitted that petitioner's mother is the mother of a soldier, who lost his life in the battle field and hence, had been granted an Indian Oil Corporation Gas Agency. She had suffered huge losses at the hands of accused who had manipulated records, committed acts of forgery and falsification of accounts and hence, the complaint had been preferred. The failure of the investigation agency to gather particulars/records would result in failure to bring home the offence against accused. It is in such circumstance, petitioner had preferred CrI.M.P.No.5599 of 2008 in C.C.No.122 of 2008 and the same stands wrongly dismissed and on erroneous considerations without going into material and relevant aspects.

6. Learned senior counsel for private respondents strongly relies on the decision of the Full Bench of this Court to the effect that after taking of cognizance, no further investigation could be had at the instance of anybody other than the investigation agency. Learned senior counsel would also place reliance on the decision of the Apex Court in *Amrutbhai Shambhubhai Patel v Sumanbhai Kantibhai Patel and others* [2017 (2) Scale]. Learned senior counsel contended that in effect, both sides had indulged in wrong doing and it is only owing to dispute over sharing of profits of the agency, the present complaint had been preferred. Learned senior counsel also submitted that having moved the present revision, petitioner had also moved CrI.O.P.No.27092 of 2009 for the similar relief. Petitioner could not have sought relief under two separate petitions. Learned senior counsel contended that cognizance having been taken, this Court would allow Court below to proceed with the case and if indeed any material surfaced against accused, it would always be open to Court below to proceed u/s.319 Cr.P.C. Respondents 2 and 3 in Criminal Revision and respondents 3 and 4 in Criminal Original Petition stand falsely arrayed as accused. Even after passage of 10 years of preference of complaint, no progress has been made. Respondents 2 and 3 in Criminal Revision and respondents 3 and 4 in Criminal Original Petition are eager to prove their innocence.

7. This Court has considered the rival submissions.

8. This Court is of the view that the mere act of taking of cognizance would not automatically bring into play the decision of the Apex Court in *Amrutbhai Shambhubhai Patel v Sumanbhai Kantibhai Patel and others* [2017 (2) Scale] to the effect that after taking of cognizance none but the investigation agency can seek further investigation. We cannot be oblivious to the particular circumstances that visit the particular case. When it is brought to notice that de facto complainant has not been put

on notice of the final report filed in the case, this Court would view the matter placing itself at the stage when the final report was filed before the Magistrate. What follows would be that at such stage, petitioner/de facto complainant had a right to file a protest petition and seek further investigation. Though petitioner in filing Crl.M.P.No.5599 of 2008 in C.C.No.122 of 2008 has spoken of further investigation or 're-investigation' and also informed the particular agency by whom he seeks such investigation, the valid right of de facto complainant to have his protest petition considered on merits cannot be defeated on mere technicalities or errors in wording. This Court would consider the prayer that would be maintainable before it and ignore that which is not. A reading of the order of the Court below reveals that it has totally failed to consider the material/factual aspects of the matter. The particular grievance of petitioner/de facto complainant is of commission of offences u/s.463, 477-A and 467 IPC i.e., offences of forgery, falsification of accounts and cheating. Material records necessary to bring home such offence have not been gathered by the investigation agency. Although learned counsel for petitioner has sought to impress upon this Court that this Court may issue suitable directions for further investigation by way of orders in Crl.O.P.No.27092 of 2009, considering

that the offences alleged in the instant case are all matters of record, this Court is of the view that it would be appropriate to direct Court below to treat Crl.M.P.No.5599 of 2008 in C.C.No.122 of 2008 as a protest petition.

9. Accordingly, the Criminal Revision shall stand allowed. The order of learned Judicial Magistrate I, Dharmapuri, passed in Crl.M.P.No.5599 of 2008 in C.C.No.122 of 2008 on 30.10.2009 shall stand set aside. Court below is directed to treat Crl.M.P.No.5599 of 2008 in C.C.No.122 of 2008 as a protest petition and consider the same on merits and pass orders in accordance with law. Considering the submission of learned senior counsel for private respondents that this case has been pending from the year 2007 this Court directs Court below to dispose of Crl.M.P.No.5599 of 2008 in C.C.No.122 of 2008 afresh as expeditiously as possible, in any event, not later than one month from the date of receipt of this order.

In view of the order passed in the Criminal Revision, Crl.O.P.No.27092 of 2009 is closed.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

gm

To

1.The Judicial Magistrate I,
Dharmapuri.

2.The Inspector of Police,
District Crime Branch,
Dharmapuri.

3.The Deputy Superintendent of Police,
Dharmapuri Town,
Dharmapuri District.

4.The Public Prosecutor,
High Court, Madras.

+2cc to M/s.S.Jayakumar, Advocate Sr.No.46511

+2cc to M/s.Hasan Mohammed Jinnah, Advocate Sr.No.46958,46957

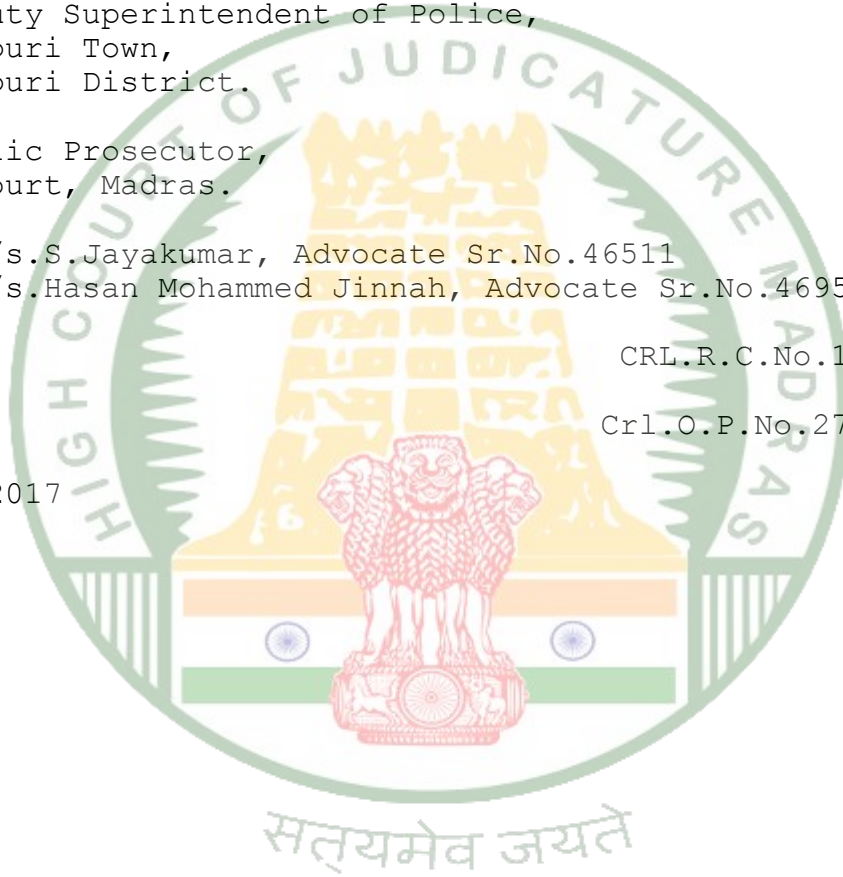
CRL.R.C.No.1164 of 2009

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NRI (CO)

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